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ASSOCIATED BRANCH PILOTS

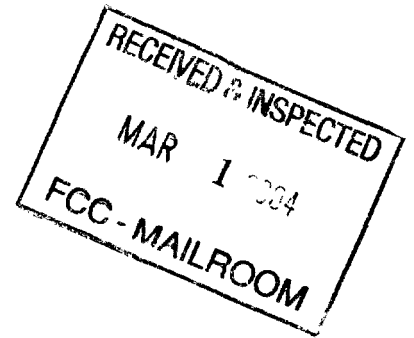
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February 25, 2004

Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-325
Washington, DC 20554

re: DA 04-378 MariTel Sharing Proposal
NTIA Petition RM-~~10321~~

10821

The Associated Branch Pilots of the Port of New Orleans (Bar Pilots) would like to express very strong concern and objection to the petition and proposal by MariTEL (DA 04-378 MariTEL Sharing Proposal) that, if accepted, would restrict the usage of international Automatic Identification System (AIS) frequencies, and thus AIS functionality, exclusively to the United States Coast Guard.

The Bar Pilots' mission is the safe navigation of vessel traffic through some of the most treacherous and busy waterways in the United States along the southern-most portion of the Mississippi River. In addition to piloting ships, the Bar Pilots' expertise with the river is used to advise maritime businesses on matters as varied as recommended drafts, dredging efforts, operating procedures, traffic schemes, and navigational aid placement. The Bar Pilots work closely with governmental agencies and industry, and serve on committees directly involved with the success of Louisiana's river ports. Our Association adds real value to the Louisiana maritime industry each and every day by ensuring the safe and efficient movement of goods from the Gulf of Mexico into the Mississippi River. Safety, obviously, is a vital concern to the Bar Pilots.

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List A B C D E

Since the Bar Pilots operate a station at the mouth of Southwest Pass in the Mississippi River, located at the confluence of the River and the Gulf of Mexico, we are often considered the first line of defense for the River. As such, we have established a cooperative, working relationship with the U.S. Coast Guard. From our Southwest Pass station, we are able monitor vessel traffic both in the vicinity and entering the Mississippi River on its way to the largest ports in America. With this in mind, when vessels unexpectedly arrive at the mouth of the River or other suspicious activity is noted, our goal is to immediately convey as much information as possible to the appropriate authorities, such the U.S. Coast Guard. Additionally, our personnel frequently assist the U.S. Coast Guard with boarding operations by providing their cutters with pertinent information such as location, estimated times of arrival, and scheduling data. The role of AIS to our operations and our ability to assist the Coast Guard is monumentally important.

Furthermore, the Bar Pilots have an agreement with the U.S. Coast Guard in which our Association makes available for them a feed from our radar and AIS systems. This data can be received by the Coast Guard's VTS center in New Orleans, expanding their effective area of coverage, and giving them "eyes" in an area critical for navigation and security – an area in which they otherwise have limited coverage from their inland base operations. This relationship is a perfect example of the cooperative arrangements with the private sector that the Department of Homeland Security envisioned when deploying marine security initiatives around the country. In a recent issue of *Marine Log*, Secretary of Homeland Security Tom Ridge commented on the Maritime Security final rules published on October 22, 2003 by saying, "We are using technology, such as the new Automatic Identification System, teamwork in designing and implementing security measures with the private sector, and a flexible response system that government, responders, and industry will all use to immediately increase security to meet emerging threats."¹ Restricting the private sector, pilot associations and other maritime security interests from receiving AIS would be in direct contradiction with the carefully planned and diligent efforts to protect our nation and maritime interests.

In 2002, the U.S. Congress passed the Maritime Transportation Security Act, requiring the U.S. Coast Guard, ports, pilots associations, maritime exchanges and any other responsible agencies and private companies to provide security at ports in the United States. A key component of the Act requires carriage and usage of AIS. Also resulting from the Act is the Coast Guard's mission of forging cooperative information-sharing arrangements with local port stakeholders, similar to their relationship with the Bar Pilots. Restricting concerned parties', such as the Bar Pilots', free access to AIS frequencies and data is both counter-intuitive and counter-productive to the recent initiatives of both the U.S. Coast Guard and the Department of Homeland Defense, particularly given their highly-publicized resource limitations. Since the Bar Pilots are the only "residents" in the Southwest pass area, limiting our access to AIS information could be compared to putting blinders on an air traffic controller.

It is no secret that the U.S. Coast Guard has neither the resources nor the funds to undertake every initiative for which it now has responsibility. To assist them with their objectives, the Coast Guard has determined that privately-funded and owned Vessel Traffic Information Systems (VTIS) will be used as part of the solution to its requirements and responsibilities, and the Department of Homeland Security, through the Transportation Security Administration, has

¹ "Maritime Security: USCG Publishes Final Rules." *Marine Log*. November 2003. Page 10.

provided ports with grant money to build and deploy VTIS systems. Other ports and high traffic areas, such as our station at Southwest Pass, have been and are going to be using privately-owned VTIS systems for which millions of dollars have already been invested nationwide. A key and required sensor in all VTS/VTIS systems is AIS, the frequencies for which MariTEL wants restricted. Such restrictions would defeat the cooperative arrangements by groups, such as the Bar Pilots, to assist the U.S. Coast Guard with its initiatives and responsibilities, and they would also be detrimental to the safety and security of our nation's waterways. The more information a pilot has about nearby vessels, their movement, and their intentions, the higher level of safety he or she can offer to the safe passage of such vessels.

The U.S. Coast Guard and other departments within the U.S. Government were responsible for negotiating with the international community to ensure a set of frequencies which were free to use for all participants in the AIS system. The frequencies settled on were not chosen by ports, pilots associations, or other port security stakeholders, but were chosen by representatives of the U.S. Government. From the perspectives of port security and navigational safety, the VTIS or VTS need only be in a receive mode, meaning that equipment operated by land-based facilities, like the Bar Pilots' station at Southwest Pass, would not be transmitting on these frequencies, just receiving critically important data. Shipping interests, however, do need to be allowed to transmit in all U.S. waters, including inland waters.

The Bar Pilots strongly believe that the Federal Communications Commission has an obligation and responsibility to provide the ability to port communities to use the AIS frequencies free of legal restrictions from ownership of these frequencies by a third party. There is a lot more at stake than ownership issues - public safety, the free movement of trade, and homeland security to mention a few. In order for the Bar Pilots to accomplish its mission and provide top-level service and safety to the maritime industry, information is essential. The data afforded to us by AIS is very valuable, and without it, safety and security may be compromised.

MariTEL, in its proposal to the FCC, cites §705 of the Communications Act of 1934, as amended, as authority for the FCC to preclude reception of the AIS frequencies by entities other than the U.S. Coast Guard, other vessels, and MariTEL. It appears that MariTEL is staking a claim to ownership of AIS transmissions and data, which should not be the case. Although MariTEL may have ownership of the frequencies, the data used for navigational safety and port security is not being generated by, nor is owned by, MariTEL. AIS equipment aboard vessels is generating the AIS transmissions; therefore, MariTEL does not own the data and §705 of the Communications Act of 1934 should not be applicable. Receipt of AIS data by parties with navigational and security interests, such as pilot associations, in no way harms "...the business interests of licensees from degradation by unauthorized interception and use of communications transmitted upon non-public frequencies."² Furthermore, MariTEL refers to section 605 of §705 to benefit its argument, but fails to cite the entire section, leaving out the preceding, yet relevant, sentence defining that the entitlement to reception is determined by the sender without regard to


² Letter dated February 9, 2004 from Dan Smith, President & CEO, MariTEL, Inc., to Catherine W. Seidel, Deputy Chief, Wireless Telecommunications Bureau (*MariTel Sharing Proposal*). Page 3 of 7.

the owner of the medium.³ In the case of AIS, the senders want entities, such as the Bar Pilots, to have receipt of their transmitted data, as it enhances the safety of their voyage.

Apparently pursuing of a commercial stake in AIS, in footnote 16 of the *MariTEL Sharing Proposal*, MariTEL states that, "The transmission of AIS information is intended for reception ... by MariTEL, for commercial purposes."⁴ This is alarming, as it appears that MariTEL believes that, although it does not own the data, it has a right to use the data for commercial purposes, such as resale. The Bar Pilots believe that this commercialized approach is inconsistent with the intentions of the AIS system and the shared responsibilities of navigational safety, and it would be similar to a telephone company or internet service provider intercepting conversations and transmissions and using them for commercial purposes. Furthermore, section 605 of §705 as found in footnote three (3) to this document could be interpreted as preventing MariTEL from using AIS transmissions and data for commercial purposes without the authority of the sender of such data. As an additional measure to enhance the intended benefits of AIS, The Bar Pilots encourage the FCC to clarify relevant rules under §705 of the Communications Act of 1934 to permit reception of AIS frequencies and transmissions such that shore-based entities with interests in maritime safety or port security, such as the Bar Pilots, be authorized to receive such frequencies and transmissions without the risk of having to purchase the data from commercial operations, such as MariTEL.

In conclusion, there are many profound reasons for the FCC to reject MariTEL's proposal, safety and security being the predominant. Given its potential contribution to safety and security, AIS is an outstanding tool for the maritime industry and U.S. government agencies. AIS and the VTIS/VTIS systems, of which AIS is a component, represent a cooperative and shared approach to Port Security between the U.S. Coast Guard, ports, pilot associations and interested parties. Accepting MariTEL's proposal would effectively destroy such arrangements and potentially quash future sharing of resources and investment by the private sector to assist the U.S. government with its safety and security initiatives. The Bar Pilots strongly oppose MariTEL's proposal and would like to see the AIS system progress rapidly by the FCC allowing the AIS frequencies under discussion to be freely used by all relevant parties.

Sincerely,


Capt. Michael R. Lorino, Jr.
President

³ The relevant sentence from Section 605 of the Act states that, "[N]o person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person.

⁴ *Id.* at 3.

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